

**Ruby Pipeline LLC's Voluntary Conservation Plan  
for Migratory Birds**

**Associated with the Construction, Operation, and Maintenance of the  
Ruby Pipeline Project in  
Wyoming, Utah, Nevada, and Oregon**

Developed by

**Ruby Pipeline LLC**

Submitted to

**U.S. Fish and Wildlife Service  
(Regions 1, 6, and 8)**

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## PREFACE

Ruby Pipeline, LLC (Ruby) proposes to construct, operate, and maintain pipeline, compression, and ancillary facilities to transport natural gas produced in the Rocky Mountain region to demand regions in northern California, Nevada, and the Pacific Northwest. The Ruby Pipeline Project (Project) falls under the jurisdiction of the Federal Energy Regulatory Commission (FERC), which is the lead agency for the Project. The Project will cross lands managed by the Bureau of Land Management (BLM) and BLM is processing rights of way for the pipeline crossings. This Project is the subject of this conservation program which was cooperatively developed by Ruby Pipeline, LLC, in coordination with the U.S. Fish and Wildlife Service (USFWS), to further the conservation of migratory birds relative to this pipeline development. The USFWS manages and protects the nation's native migratory birds under the authorities of the Migratory Bird Treaty Act (MBTA) (16 U.S.C. §§ 703-712), and the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. §§ 668-668d). Further, Executive Order No. 13186 emphasizes the responsibilities of all Federal agencies, such as FERC, to plan and implement actions to conserve birds in the conduct of their other federally mandated responsibilities.

The Project is expected to consist of approximately 675.2 miles of 42-inch-diameter gas pipeline, along with associated compression and measurement facilities, located between Opal, Wyoming and Malin, Oregon. An approximate 2.6-mile lateral of 42-inch diameter is also planned to be constructed in Klamath County, Oregon. The pipeline rights-of-way (ROW) will cross four states: Wyoming, Utah, Nevada, and Oregon. Four new compressor stations are expected to be installed as part of the Project, as well as ancillary facilities consisting of 44 mainline valves and 10 interconnects located within four measurement facilities.

Ruby filed for a Certificate of Public Convenience and Necessity (Certificate) with FERC to construct and operate the Project. As part of its review of the proposed Project, FERC prepared an Environmental Impact Statement (EIS) for the Project (FERC Docket No. CP09-54-000). FERC granted Ruby a Certificate on April 5, 2010.

## 1.0 PROJECT DESCRIPTION

The Project will involve the construction and operation of a buried natural gas pipeline and related above-ground facilities including: compressor stations, temporary extra workspaces, staging areas, water appropriation sites, contractor yards, pipe yards, construction camps, temporary housing facilities, and new and to-be-improved access roads. The construction ROW would be 115 feet wide for a majority of the pipeline route; Ruby would use a narrower ROW in some areas to minimize impacts to sensitive environmental resources, such as wetlands, and would use a wider ROW in areas of uneven terrain and other construction constraints. Following construction, Ruby would retain a 50-foot-wide permanent ROW to operate the pipeline and aboveground facility sites. Construction activities associated with the Project would include: pipeline construction ROW, temporary workspaces, contractor yards, access roads, and aboveground facilities. Approximately 19,724 acres of land would be impacted during construction of the pipeline. This total is for the area of direct habitat impacts and does not account for other disturbance impacts that may occur outside of these acres in the adjacent habitat. A more detailed description of the Project is found in the Ruby Pipeline LLC's Voluntary Conservation Plan for Migratory Birds Support Document (Attachment 1). Ruby would primarily use existing public and private roads and would construct a limited number of new roads to gain access to the Project area. Many of the existing access roads are presently in a condition that could accommodate construction traffic without significant modification or improvement. Some roads consist of small two-track roads that are not suitable for construction traffic. Ruby would improve unsuitable access roads through grading, and/or widening up to a total road width of 30 feet. Following construction, Ruby would restore access roads to their preconstruction condition, to the extent practicable, unless otherwise requested by a landowner or land management agency.

Ruby anticipates beginning construction of the Project in 2010 and completing construction in 2011. Construction will occur throughout the year and will overlap the primary migratory bird nesting season (early April through mid-July) for migratory birds in the four-state area of the proposed Project. In terms of Project-related disturbances and habitat losses to migratory birds, this primary nesting season is the most important time period to avoid.

The primary construction impacts will be the cutting, clearing, and/or removal of existing vegetation, which provides migratory bird habitat, within the construction work area. These actions will remove nesting habitat and could impact migratory birds through the loss of nests (including those with eggs and/or young), possible loss of migratory birds themselves, reduction in migratory bird productivity, displacement, loss of second nesting opportunities, etc. Ruby will, to the best extent possible, remove vegetation prior to the nesting season so as to discourage birds from establishing nests in those areas. Some of the vegetation communities that Ruby will restore or allow to revegetate will achieve pre-project conditions within three to five years after construction. Construction impacts in forested and some sagebrush steppe areas are considered to be long-term because of the time required (up to 120 years) for trees and sagebrush species to reach the same pre-construction condition within the Project route.

Ruby has developed restoration plans specific to each state traversed by the Project. Reclamation of the ROW would be considered successful if upon visual survey, and documentation with digital photos (both pre-project and post-reclamation), the density and cover

of non-nuisance vegetation are similar in density and cover to adjacent undisturbed lands. There is also the expected impact of habitat fragmentation, which will be greater than the actual acreage cleared. Many species of migratory birds, and often those of greatest conservation concern, require large blocks of contiguous habitat to successfully reproduce and survive. Construction and maintenance of utility ROWs, and associated new or widened access roads, fragment habitat, with the resulting fragments sometimes losing or having reduced capacity to successfully sustain associated bird species. Much of the Project is located in previously disturbed areas fragmented by ROWs or other development and, as such, fragmentation of areas of contiguous habitat has been limited to the extent possible.

Operational activities on the pipeline would be limited to maintenance of the ROW and inspection, repair, and cleaning of the pipeline. Vegetation on the 50-foot-wide permanent ROW would be maintained by mowing, cutting, and trimming as described in Ruby's Plan and Procedures,<sup>1</sup> and other documents to maintain accessibility of the ROW and to accommodate pipeline integrity surveys. Ruby estimates that this permanent ROW required for operation of the Project would comprise a post-construction footprint of approximately 4,250 acres. Future impacts to migratory bird habitat after construction would be limited to these acres.

Periodic aerial and ground inspections by pipeline personnel would assist with determining whether additional issues may arise with the Project. These could include identification of soil erosion that may expose the pipe, surface visual clues that may indicate a leak in the line, conditions of the vegetation cover and erosion control measures, unauthorized encroachment on the ROW, excavation activities in the vicinity of the ROW, and other conditions that could present a safety hazard or require preventative maintenance or repairs.

## **2.0 REGULATORY FRAMEWORK**

### **2.1 MIGRATORY BIRD TREATY ACT**

The MBTA protects migratory birds, and their nests, eggs, young, and parts from possession, sale, purchase, barter, transport, import, and export, and take. For purposes of the MBTA, "take" is defined as "to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect." (50 C.F.R. § 10.12). The MBTA applies to migratory birds that are identified in 50 C.F.R. § 10.13 (defined hereafter as "migratory birds").

Although migratory bird habitat is not protected under the MBTA, activities that impact habitat and result in take (i.e., wound or kill) of migratory birds would violate the MBTA. Any activities, intentional or unintentional, resulting in take of migratory birds are prohibited unless otherwise permitted by the USFWS. Many migratory birds, including raptor species, are sensitive to disturbance when nesting and roosting. Should such disturbance result in the wounding or killing of adult birds, chicks, or eggs, including abandonment of a nest with eggs or young, the activity causing the disturbance would violate the MBTA. Activities involved in construction of the Project have the potential to result in take of migratory birds. After construction is completed there is also the potential for future maintenance activities to take migratory birds depending on how these actions are completed.

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<sup>1</sup> Appendix F of the Federal Energy Regulatory Commission's Final Environmental Impact Statement (2010).

## **2.2 BALD AND GOLDEN EAGLE PROTECTION ACT**

The BGEPA provides additional protection to bald and golden eagles. The BGEPA prohibits the take, possession, sale, purchase, barter, offer to sell, purchase, or barter, transport, export or import, of any bald or golden eagle, alive or dead, including any part, nest, or egg, unless allowed by permit [16 U.S.C. § 668(a)]. “Take” under this statute is defined as “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb” 50 C.F.R. § 22.3. “Disturb,” in turn, is defined as “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.” *Id.* If a proposed project or action would occur in areas where nesting, feeding, or roosting eagles occur, then project proponents may need to take additional conservation measures to achieve compliance with the BGEPA.

## **2.3 EXECUTIVE ORDER 13186**

Executive Order 13186 of January 10, 2001, identifies the responsibility of federal agencies to protect migratory birds and their habitats, and directs executive departments and agencies to undertake actions that will further implement the MBTA. Executive Order 13186 includes a directive for federal agencies to develop a memorandum of understanding (MOU) with the USFWS to promote the conservation of migratory bird populations, including their habitats, when their actions have, or are likely to have, a measurable negative effect on migratory bird populations. Whereas the MBTA only protects migratory birds, Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat.

The Executive Order encourages federal agencies to undertake several types of conservation actions for migratory birds including: integration of bird conservation principles, measures, and practices into agency activities; avoiding or minimizing, to the extent practicable, adverse impacts on migratory bird resources when conducting agency actions; restoration and enhancement of migratory bird habitat; to evaluate the effects of actions and agency plans on migratory birds in any environmental analyses of federal actions required by NEPA or other established environmental review processes; to identify where unintentional take reasonably attributable to agency actions is having, or is likely to have, a measurable negative effect on migratory bird populations, and relative to this take to develop and use principles, standards, and practices that will lessen the amount of unintentional take; and to inventory and monitor bird habitat and populations within the agency’s capabilities and authorities to the extent feasible.

The Bureau of Land Management (BLM) recently entered into a Memorandum of Understanding with the USFWS to identify and implement strategies that promote conservation of migratory birds and to avoid or minimize adverse impacts on migratory birds. BLM, in coordination with the USFWS, is to develop conservation measures and ensure monitoring of conservation measures to minimize, reduce or avoid unintentional take. While FERC has not developed an MOU with the USFWS, FERC included the development of a migratory bird conservation plan in the conditions required for Project construction.

## **2.4 COMPLY WITH THE REGULATORY AND CONSERVATION FRAMEWORK**

Ruby will take all necessary and reasonable measures to comply with the MBTA and BGEPA, and also desires to provide, per Executive Order 13186, for the reasonable restoration and conservation of habitats for migratory birds in the four states where the Project will be constructed. Accordingly, Ruby will implement this Conservation Measures both during and after construction of the Project.

## **3.0 HABITAT ASSESSMENT**

Ruby places high value on conserving migratory bird habitats in the Project area. Therefore, Ruby developed the Ruby Pipeline LLC's Voluntary Conservation Plan for Migratory Birds (Plan) which avoids and minimizes adverse effects to migratory bird habitats. To determine where the highest likelihood of adverse impacts to migratory bird habitats occurred, Ruby conducted habitat assessments to identify the major types of vegetation communities that will be disturbed by construction of the Project. To augment this, a habitat mapping effort was completed to define the relative quality, quantity, and types of migratory bird habitat that will be affected by the Project. Ruby sponsored habitat mapping workshops with state and federal wildlife agencies in the four states in the Project area and collaboratively defined the main habitats of concern. Ruby has committed to avoiding and minimizing impacts to these habitats and has agreed to follow the best management practices described in this Plan. Results of the mapping effort and habitat quality characterization are detailed in the Ruby Pipeline LLC's Voluntary Conservation Plan for Migratory Birds Support Document (Attachment 1).

## **4.0 CONSERVATION MEASURES**

The purpose of this Plan is to set forth conservation measures that Ruby will voluntarily implement to comply with the MBTA and the BGEPA. These conservation measures do not address the greater sage-grouse because that species is not protected by the MBTA. Conservation measures applicable to the greater sage-grouse are addressed separately in a similar conservation agreement for greater sage-grouse and pygmy rabbit as agreed upon by Ruby, BLM, and the States of Wyoming, Utah, and Nevada.

Ruby is committed to the conservation measures summarized below and in following subsections in order to avoid and minimize impacts to migratory birds. Ruby will take all necessary and reasonable measures to comply with the MBTA and BGEPA, and also desires to provide for the reasonable restoration and conservation of habitats for migratory birds in the four states where the Project will be constructed. Accordingly, Ruby (in coordination with the USFWS), has prepared, and will implement, these conservation measures both during and after construction of the Project.

Performance by Ruby of the conservation measures set forth in Sections 4.1, 4.2, and 4.3 below is intended solely as a mechanism to avoid take of migratory birds. Performance by Ruby of the conservation measures detailed in Section 4.4 is intended to offset temporary and permanent impacts to habitats associated with Project activities.

#### **4.1 GENERAL AVOIDANCE AND MINIMIZATION MEASURES FOR MIGRATORY BIRDS**

The following temporal and spatial conservation measures will be implemented by Ruby. The Project utilizes, to the degree possible, areas that contain limited migratory bird habitat values, or which have been previously disturbed. More than half of the Project facilities will be located within or adjacent to existing ROWs or disturbances. By siting the Project within or adjacent to existing ROWs or disturbances, Ruby has substantially reduced the Project's impacts to migratory birds and their habitats.

- Ruby completed preconstruction raptor and nesting bird surveys during the 2008 and 2009 survey seasons (both within and outside the nesting season). Ruby has provided survey data from 2008 and 2009 that identifies the preliminary number and species of nesting migratory birds found along the ROW. Ruby will also conduct preconstruction field surveys in 2010.
- Ruby will, whenever practicable, avoid impacts to migratory birds by completing construction activities outside the migratory bird nesting season. The maximum migratory bird nesting season generally extends from early February to late August. Within this time period the primary migratory bird nesting season extends from early April to mid-July. By implementing the best possible timing for vegetation clearing and by buffering active nests (i.e., nests with eggs or young in them) from construction activities during nesting, Ruby will avoid impacts to most nesting bird species.
- Ruby will avoid direct impacts to migratory birds during construction, e.g., impact caused by cutting, clearing, or removal of vegetation along the pipeline route, by implementing appropriate temporal and spatial avoidance conservation measures and species-specific buffers for active nests. Ruby will consult USFWS on appropriate buffers to implement for any active non-raptor migratory bird nests encountered. In addition, Ruby will remove inactive nests prior to the nesting season (except for eagles and burrowing owl burrows- see later text on methods to be used for burrowing owl burrows), in accordance with the USFWS Nest Destruction Policy, from areas likely to be impacted to discourage nesting of migratory birds within the ROW.
- For any communication towers constructed as part of the Project, Ruby will implement all applicable conservation measures from the USFWS Guidance on the Siting, Construction, Operation and Decommissioning of Communication Towers (USFWS 2000).
- Where habitat suitable for use by migratory birds will be impacted by pipeline construction activities during the nesting season, Ruby will mow, grub, or scrape the habitat outside of the nesting season to the maximum extent practicable. This activity is intended to preclude avian species from nesting within the site. Relative to habitat-clearing activities, it is especially important to avoid the primary migratory bird nesting season of early April through mid-July. Ruby will seek technical assistance from USFWS should assistance be necessary. The Project is divided into seven construction spreads, i.e., segments of pipeline being constructed concurrently in an assembly line fashion, as described in the Federal Energy Regulatory Commission's Final Environmental Impact Statement (FEIS 2010) for the Project. Where Ruby is able to

commence construction on a given construction spread prior to the primary nesting season, it will, where possible, direct construction activities within that spread to begin in areas of greater biological importance to migratory birds. This will increase the likelihood of completing construction of that spread within those areas prior to the start of the nesting season.

- For those construction spreads where Ruby must commence construction during the migratory bird nesting season, it will, where possible, direct construction activities within that spread to begin in areas of least importance to migratory birds. This will increase the likelihood that construction of that spread within areas of greater biological significance will not occur until the primary nesting season has concluded.
- Regardless of the progression of the construction spread, work activities (ROW clearing, actual pipeline construction, etc.) within the designated protective buffer zone of any active raptor nest will be deferred until the young have fledged. Exceptions to this restriction will be allowed for motor vehicle traffic, etc. on previously existing public or private roads where this activity does not generate noise levels or disturbance such that it could result in take of any active raptor nest.
- Where activities that will disturb migratory bird habitat cannot be avoided from early April through mid-July, Ruby will have a qualified biologist assigned to each spread survey the areas to be cleared, plus a 20-foot buffer adjacent to the areas affected by clearing/cutting/removal of vegetation, for active nests. The biologist will consult with the nearest USFWS Ecological Services Field Office to obtain additional guidance on conducting the necessary surveys; additional input may be provided by USFWS staff at the Regional Migratory Bird Management Office and the USFWS Office of Law Enforcement. The qualified biologist will identify (using GPS) any active nests located in areas to be cleared and the buffer adjacent to the ROW and note associated species. Ruby's biologists will monitor nests in the buffer and the associated birds' behavior and they will promptly notify and consult with USFWS staff in cases where nesting migratory birds are located. Construction will be limited from 9:00 a.m. to 6:00 p.m. Cases may arise where a decision is made jointly by Ruby in coordination with USFWS that eggs and/or young birds should be removed from an active nest. Should eggs and/or young birds be removed from an active nest, Ruby will obtain authorization from the USFWS and/or any appropriate State for such activity. In these cases Ruby will coordinate with local licensed bird rehabilitation facilities to facilitate such removal. If such a decision is made Ruby will only use bird rehabilitation facilities that have all appropriate state and USFWS required permits.
- If active non-raptor nests are encountered during Project construction, Ruby will work with USFWS to identify appropriate spatial buffers based on species ecology and relative sensitivity to disturbance activities. Ruby will maintain these spatial buffers and work around the nest until young fledge and are no longer vulnerable.
- Where practicable, Ruby will consider micro-realignment of the pipeline to establish an acceptable distance to ensure against adverse direct or indirect impacts.
- Ruby will monitor its implementation of these avoidance and minimization measures if constructing during the nesting season and will provide a report (via email or telephone

conversation) to USFWS representatives for each state when the measures are implemented.

- Following completion of construction activities that occur during the migratory bird nesting season, Ruby will submit to the USFWS and other resource agencies a summary report detailing the location of active nests identified by Ruby in the Project area, what the specific treatment of each nest was, and what the apparent health and status of each nest was through the completion of the breeding season.

## **4.2 RAPTORS, INCLUDING BALD AND GOLDEN EAGLES**

The following are best management practices that have been identified for raptor species. Ruby will request technical assistance from the USFWS and other federal and state agencies as necessary:

- During construction, Ruby will utilize the spatial buffers around active raptor nests as outlined in Table 1. These spatial buffers reflect the most conservative applicable buffers identified by federal and state agencies. Regardless of the progression of a construction spread, no activity will take place within a raptor's buffer zone until the young have fledged. Exceptions to the buffer zones will be considered on a case-by-case basis, based on biological support and in coordination with the USFWS. In some cases natural barriers, such as topography or vegetation, located between the nest and the Project may serve to minimize impacts and thus may be acceptable by the USFWS to justify modifying a protective spatial buffer.
- From January 1 to August 31, Ruby will adhere to minimal spatial buffers for active bald eagle nests (1.0 mile) and golden eagle nests (0.75 mile). However, depending on the physical location of the nest (e.g., whether there are any natural barriers between the nest and the Project) and the type of disturbance activity, these buffers could either be decreased or increased in size. For instance, USFWS has greater concerns for actions that generate high-decibel level noise, such as blasting and helicopter use, than for operating heavy equipment or welding pipes. Hence, USFWS recommends that Ruby use 1.0-mile buffers for actions like blasting unless local landscape features lessen blasting impacts. In these cases the 1.0-mile buffer would apply to both eagle species. Ruby will coordinate with USFWS and other appropriate natural resource agencies regarding these site-specific variances. Generally, for nesting bald eagles, Ruby will follow the USFWS National Bald Eagle Management Guidelines (USFWS 2007).
- When active bald or golden eagle nests are located on or within 0.5 mile of the ROW, Ruby will coordinate with USFWS regarding appropriate conservation measures to apply in conserving these species.
- For actions that will impact eagle roosting or foraging sites, Ruby will follow the Recommendations for Avoiding Disturbance at Foraging Areas and Communal Roost Sites and Additional Recommendations to Benefit Bald Eagles in the USFWS National Bald Eagle Management Guidelines (USFWS 2007) and apply these to both bald and golden eagles.

- For Burrowing Owls, Ruby will conduct migratory bird nest surveys during active pipeline construction when this construction is scheduled to occur during the nesting season. If during these bird surveys burrows used by burrowing owls are found they will be checked for eggs or young (i.e. establish whether or not the burrow constitutes an active nest). If the burrow does not constitute an active nest, Ruby may construct artificial burrows outside of the active pipeline construction area and between 0.062 miles (100 m) and 0.25 miles away from the original burrow. Any artificial burrows constructed would employ the latest recommended practices from the scientific literature and/or management documents in their construction. Further, the USFWS recommends a 3:1 replacement ratio of artificial burrows constructed to the natural burrows they are designed to replace. Artificial burrows should be placed in clusters each about 0.031-0.062 miles (50-100 meters) apart. Natural burrows will be rechecked about 1 week after the artificial burrows are fully constructed to determine whether there is an active nest. If there is no active nest, personnel will evict the burrowing owls from the natural burrow and then collapse it so the owls cannot re-enter. Artificial burrows should be monitored at least until active construction on the pipeline is completed for occupancy, productivity, and nest success. The USFWS further recommends that any artificial burrows constructed be monitored until after efforts by Ruby to re-establish natural vegetation in the pipeline corridor are completed. If the burrow is active, and therefore passive relocation methods are not an option, then construction activities would be prohibited within 0.25 to 0.75 miles of any burrow occupied by burrowing owls from March 1 through August 31 or until the young fledge. The exact buffer to be implemented would be determined through consultation with USFWS, and will depend on factors like stage in the nesting cycle the active nest was discovered, local topographic features, etc.
- For Barn Owls, if Ruby finds an active nest during bird nest surveys they will document the nest and apply the following measures: If the active Barn Owl nest is located in a building (e.g., barn, out building, house, shed, etc) and the building itself is not going to be removed or otherwise disturbed in any way by pipeline construction, Ruby will then apply a 0.062-mile (100 meter) spatial buffer from February 1 to September 15. The exception to this is if blasting, low elevation helicopter flights or other high-decibel noise due to construction activities are planned near the active nest. Where high-decibel construction activities occur in close proximity to the active nest, Ruby will apply a 0.25-mile spatial buffer from February 1 to September 15 while the nest is active. If this is not feasible, Ruby will contact the USFWS for an appropriate spatial buffer to protect the active nest. If an active Barn Owl nest is located in a natural cavity, such as in a cliff face or a tree, then Ruby will apply a 0.25-mile buffer from February 1 to September 15 or until Ruby has confirmed that the young have fledged from the nest. Any active Barn Owl nests within 0.25 miles of the construction area will be monitored during active pipeline construction to determine the fate of the nest during the construction period.
- In coordination with the USFWS and other appropriate resource management agencies, noise reduction barriers may be used to minimize disturbance when activities are proposed within an established protective buffer.

- To preclude eagles or other raptors from nesting on human-made structures such as communication towers and to avoid impeding operation or maintenance activities, install anti-perching devices on structures to discourage use by raptors.

**Table 1. No Surface-Disturbing Activity Spatial Buffers and Seasonal Timing Restriction Stipulations for Raptor Nests.**

Species	Spatial Buffer (miles)	Seasonal Timing Restriction
Bald eagle	1.00	Jan 1 – Aug 31
Golden eagle	0.75	Jan 1 – Aug 31
Northern goshawk	0.75	March 1 – Aug 15
Northern harrier	0.75	April 1 – Aug 15
Cooper’s hawk	0.75	March 15 – Aug 31
Ferruginous hawk	1.00	March 1 – Aug 1
Red-tailed hawk	0.75	March 15 – Aug 15
Sharp-shinned hawk	0.75	March 15 – Aug 31
Swainson’s hawk	0.75	March 1 – Aug 31
Turkey vulture	0.75	May 1 – Aug 15
Peregrine falcon	1.00	Feb 1 – Aug 31
Prairie falcon	0.75	April 1 – Aug 31
Merlin	0.75	April 1 – Aug 31
American kestrel	0.05 (300 feet)	April 1 – Aug 15
Osprey	0.75	April 1 – Aug 31
Burrowing owl	0.25 to 0.75 if nest active (see previous discussion for this species above)	March 1 – Aug 31
Flammulated owl	0.75	April 1 – Sept 30
Great horned owl	0.75	Dec 1 – Sept 30
Long-eared owl	0.75	Feb 1 – Aug 15
Northern saw-whet owl	0.75	March 1 – Aug 31
Short-eared owl	0.75	March 1 – Aug 1
Northern pygmy-owl	0.75	April 1 – Aug 1
Western screech-owl	0.75	March 1 – Aug 15
Barn owl	0.062 to 0.25 (see previous discussion for this species above)	Feb 1 – Sept 15

Source: USFWS 2002 as amended by various BLM Resource Management Plans and state guidelines

### 4.3 POST-CONSTRUCTION ACTIVITIES

The following are commitments Ruby will implement following construction of the pipeline:

- To reduce impacts on vegetation within the Project footprint and to improve the probability of successful revegetation of disturbed areas, Ruby will implement the restoration measures included in the Ruby's Reclamation Plans. For this work, greater restoration efforts will be made in those areas with higher-quality habitat versus those areas with lower-quality habitat.
- With respect to future routine operational and maintenance activities associated with the Project, if it is necessary to perform habitat clearance or other surface disturbance activities, Ruby will coordinate with local USFWS representatives to schedule such activities outside of the migratory bird nesting season. Hence routine vegetation maintenance work (clearing, cutting, etc.) will not need to occur between early April and August 1 in any year.
- Whenever possible Ruby will close all unnecessary roads after Project construction is completed and revegetate these areas to restore the site to pre-construction habitat conditions. This is subject to approval from private landowners and affected land management agencies.
- If non-routine actions must be performed to alleviate, avoid, or respond to potential Project or pipeline-related risks to public health and safety, Ruby will coordinate with the Migratory Bird Permits Office of USFWS prior to taking those actions if they could result in the take of migratory birds.
- In the event of an emergency that threatens public health and safety, Ruby will take the necessary actions to address the emergency and then coordinate with USFWS if the action is likely to result in the take of migratory birds.

#### **4.4 HABITAT CONSERVATION MEASURES**

Ruby recognizes that Project construction will remove important migratory bird habitats. Recognizing that, Ruby will perform the following actions to offset potential temporary and permanent effects to migratory bird habitats that are impacted by project activities.

Ruby will cooperate with the USFWS to address Project impacts on migratory bird habitat (such as forest loss, impairment or loss of riparian habitats, and habitat fragmentation) by contributing funds to a third-party non-profit conservation organization to be used for migratory bird conservation purposes. To accomplish this objective, Ruby will deposit funds in an account (or accounts, if necessary) to be used for the conservation of migratory bird habitat through the acquisition of lands (through fee title or perpetual conservation easements), implementation of habitat restoration, and long-term management of the lands for the benefit of migratory birds. Other intended uses for these funds include: migratory bird habitat enhancement, management, and improvement. The amount of the funds contributed by Ruby is based on the value to migratory birds of habitats lost or degraded, land values, fee title costs, easement costs, habitat restoration or improvement costs, costs for administration of the funds, long-term management and maintenance costs, and other anticipated costs necessary to accomplish the conservation actions determined by Ruby, in collaboration with the USFWS as appropriate to offset project impacts to migratory bird habitats.

Prior to commencement of construction, Ruby will place \$2,827,947 in an interest-bearing escrow account fund to be used to conserve migratory bird habitat. The funds in this account will be disbursed by the selected third-party, non-profit conservation organization. Funds provided by Ruby through this Plan are in addition to, and separate from, costs for pre-construction monitoring of migratory birds and monitoring of birds during actual construction.

In coordination with USFWS, Ruby will identify an appropriate third-party, non-profit conservation organization(s) that will be responsible for ensuring that the funds from the conservation escrow account are disbursed for migratory bird habitat acquisition, restoration, enhancement, improvement, and management efforts. This third-party non-profit independent conservation organization will be responsible for documenting that Ruby provides the funds as described above. This third-party non-profit conservation organization could also be involved with monitoring and reporting on the implementation and success of habitat acquisitions/management, restoration/enhancements, etc based on the conservation standards enunciated as part of the escrow account.

Ruby, in coordination with USFWS, will develop a separate agreement with the third-party organization to identify conservation standards and objectives and to address how the third-party conservation organization will disburse funds for projects. Ruby will seek the technical assistance of USFWS with respect to restoration, enhancement, improvement and management efforts for specific acquisitions.

Projects completed using funding provided by Ruby will be monitored after they have been implemented. This monitoring should be relatively simple and cost effective. The primary goals of monitoring these projects are first to determine if they were completed and second to determine whether they met the stated migratory bird conservation objective they were designed to accomplish. Ruby will work with the third-party conservation organization, USFWS, and any other appropriate parties to develop appropriate monitoring plans. Ruby will seek technical assistance from the USFWS on how monitoring can occur. The costs of project monitoring and reporting to the USFWS will be funded from the conservation account established by Ruby pursuant to this section.

#### **4.5 COORDINATION AND COOPERATION WITH OTHER FEDERAL AND STATE AGENCIES**

Ruby recognizes that the BLM, the U.S. Forest Service, Nevada Department of Wildlife, Wyoming Game and Fish, Oregon Department of Fish and Wildlife and Utah Division of Wildlife Resources all have some jurisdiction and/or management authority for migratory birds and their habitats within the Project area. Ruby will continue to coordinate with these agencies on migratory bird conservation efforts.

The USFWS will:

- Provide Ruby with technical assistance and guidance concerning reasonable measures to be taken by Ruby to comply with the MBTA and BGEPA and avoid or minimize the impacts to migratory birds during construction of the Project.

- Assist Ruby in the identification of an appropriate independent third-party, non-profit conservation organization(s) to establish an account(s) into which Ruby will contribute funds for the acquisition, enhancement, monitoring, management and maintenance, and/or conservation of migratory bird habitat.
- Based on the results of pre-construction surveys, will recommend to Ruby the preferable location and timing for commencement of construction for portions of the Project that may impact migratory birds.
- Provide guidance to Ruby for post-construction operation and maintenance actions so that such actions are conducted in a way that avoids or minimizes impacts to migratory birds.
- Provide guidance to Ruby with respect to monitoring of lands acquired for conservation of migratory birds, as described in this Plan.

## General Provisions

### **4.6 LIMITATIONS ON AUTHORITIES**

Nothing in this Plan shall be construed as affecting the authorities of any party or as binding them beyond their respective authorities or responsibilities. Nothing in this Plan shall be construed as obligating the United States, its officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

### **4.7 NO RESTRICTION ON SIMILAR PLANS**

This Plan in no way restricts Ruby from participating in similar activities with other public or private agencies, organizations, or individuals. It is the express intent of Ruby that the contributed funds be leveraged to the maximum extent practicable by supplemental funding from any legally available source.

## **5.0 CONTACTS**

Notifications and or contacts anticipated by this Plan may be sent by first class mail, postage pre-paid, or by properly addressed electronic mail to the following principal contacts:

Ruby Pipeline, LLC  
 Environmental Department  
 c/o El Paso Corporation  
 P.O. Box 1087  
 Colorado Springs, CO 80944

U.S. Fish and Wildlife Service  
 Migratory Birds and State Programs  
 P.O. Box 25486  
 Denver Federal Center  
 Denver, CO 80225-0486